IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.993 OF 2001
IN
SESSIONS CASE NO.472 OF 1995

Suresh Vishwanath Jadhav ..Appellant
(Orig.Accused)

Vs.

The State of Maharashtra ..Respondent

Mr.Arfan Sait for the appellant

Mr.D.S.Mhaispurkar, A.P.P. for the state

CORAM : J.N.PATEL &
SMT.ROSHAN S.DALVI, JJ.

DATED : 7TH JULY, 2006

ORAL JUDGMENT (PER J.N.PATEL, J):

1. The appellant was tried by the Additional Sessions Judge, Pune on a charge of having committed murder of his wife by pouring kerosene and setting her ablaze and also for having treated her with cruelty.The learned Additional Sessions Judge, found the appellant guilty on both the counts and convicted him for committing offence punishable under sections 498A and 302 of the Indian Penal Code and sentenced him to suffer

rigorous imprisonment for life and fine of Rs.500/- in default to suffer R.I. for one month for the offence punishable under section 302 of the Indian Penal Code. The Trial Court did not impose any separate sentence for the offence punishable under section 498A of the Indian Penal Code. The appellant has therefore, preferred this appeal to challenge his conviction and sentence.

2. In a nutshell, it is the prosecution's case that the deceased Sangita was married to the appellant serving as a Police Constable in the year 1990-91. After the marriage, the deceased went for cohabitation to the house of the appellant accused at Vadgaon, Maval. Out of the wedlock, a girl child was born and till then there was no problem in so far as the matrimonial life of the couple was concerned.

3. According to the prosecution, the appellant accused thereafter, started ill-treating his wife i.e. deceased Sangita and used to beat her on small mistakes. The deceased Sangita complained to her parents namely her mother Vastala Laxman

Ingale, P.W.No.4 about the ill-treatment suffered by her at the hands of the accused. She was given an understanding and asked to adjust herself. Sangita was a graduate having obtained B.Com. decree and was trying to secure a job.

4. On the fateful day i.e. 20.8.95 at about 8 p.m. while Sangita was in a house along with her husband and father-in-law in flat no.1, Lal Bahadoor Shastri Hsg.Soc. Erandavane, Pune, the appellant accused poured kerosene on her person and set her ablaze. When this incident occurred the attention of Hema Sanju Lakhe, P.W.No.3 who was friend of Sangita and residing in the neighbourhood was drawn towards her house by her husband who noticed that smoke was raising out of the flat of Sangita because of which Hema Sanju Lakhe rushed to the flat of Sangita alongwith her husband and on reaching there saw that Sangita had suffered burn injuries which was extinguished. Sangita requested her to remove the partly burnt clothes from the person but it was not possible as the clothes were stuck to the body and therefore, Sangita asked for scissors from her husband who refused to give the

same. Her father-in-law gave the scissors because of which Hema Lakhe could take out the stuck clothes from the person and wrapped her in a chadar. Thereafter, Sangita was taken to the hospital in an auto-rickshaw. Sangita was admitted at Sanjivan Hospital, Karve Road, Pune where she came to be examined by Dr. Ukrant Anant Kurlekar, P.W.No.2 who found that the patient had suffered burnt injuries to the extent of 50 to 52% on all over the body. It appears that the police was informed who requisitioned Shri Koranne, Special Executive Magistrate, Pune to record her dying declaration. In the dying declaration made to Shri Koranne, the deceased did not implicate the accused and exonerated him by stating that at about 9 p.m. she was making preparation to cook and for that she filled in kerosene in the stove and the stove burst due to which, part of saree caught fire and she got burnt and that on her raising alarm, her father-in-law extinguished the fire. In view of this, the police did not take cognisance of the incident. Subsequently, after the mother and relatives of Sangita arrived at the hospital on getting the information, she informed them that by

pouring kerosene oil on her person her husband set her on fire. Her mother, Vastala Laxman Ingale, P.W.No.4, informed about the facts leading to the incident to the Doctor in Sanjeevan Hospital. Dr.Palshikar, thereafter gave a phone call to Kothrud Police Station on 23.8.95 informing that the patient Sangita Jadhav had some grievance and that she wanted to make a complaint. This telephonic message was received by P.S.I. Shaikh, (P.W.No.8). On getting the telephonic message, A.S.I. Khedekar wrote a letter to the Special Judicial Magistrate on 23.8.95 requesting him to record second dying declaration of Sangita Jadhav. It is the case of the prosecution that on 20.8.95 A.S.I.Khedekar got the dying declaration recorded by another Special Judicial Magistrate and has drawn the scene of offence panchnama and entry of the same was taken in the station diary on 20.8.95 itself. The scene of offence panchnama (Ex.20) came to be prepared in the presence of panchas and the articles from the scene of occurrence also came to be seized and were sent to the chemical analyser for his report. On getting the information P.S.I. Shaikh visited the Sanjeevan Hospital and recorded

the complaint of Sangita on 23.8.95 and obtained impression of toe of the left leg which was treated as an F.I.R.Ex.27, the Police registered the crime against the appellant accused for having committed offence under section 307 of the Indian Penal Code.

5. According to the prosecution, it is in the second dying declaration Ex.11 recorded on 24.8.95 by Special Judicial Magistrate, J.H.Khomane, (P.W.No.1) which was submitted to Kotrud Police Station that P.S.I.Shaikh, (P.W.No.8) visited Sanjeevan Hospital and recorded the complaint of Sangita.

6. In the course of investigation, P.S.I.Shaikh also recorded the statement of the witnesses and relatives of the deceased and the appellant accused came to be arrested on 25.8.95 at about 12.15 a.m. under the arrest panchnama Ex.8. Thereafter, investigation was handed over to Shri A.P.I.Hasbnis, (P.W.No.10) on 29.8.95. On being entrusted with the investigation of the case from P.S.I.Shaikh, A.P.I.Hasbnis visited the deceased in Sanjeevani Hospital and interrogated her and also

interrogated the medical officer there. He carried out further investigation and recorded the statement of sister of Sangita. On 24.8.95, he received information of the death of Sangita. Therefore he alongwith A.S.I.Khedekar visited Sanjeevan Hospital, conducted inquest panchnama and the corpse was sent to Sasoon Hospital, Pune for post mortem examination which came to be performed on 28.9.95. After the death of Sangita the offence against the appellant accused which was initially registered under section 307 of the I.P.C. was converted to s.302 of the I.P.C. and thereafter investigation was handed over to P.S.I.Shaikh. After the investigation was completed, charge sheet in the case came to be filed against the accused in the court of J.M.F.C. and the Magistrate committed the case to the court of Sessions, at Pune for trial.

7. In respect of the charge, the appellant accused pleaded not guilty and came to be tried. It was his case that he has been falsely implicated by the relatives of the deceased at the instance of his brother, A.S.I.Krishnarao Jadhav and that

Sangita suffered burn injuries by way of accident.

8. The prosecution in order to establish its case examined 11 witnesses which includes the Special Judicial Magistrate who recorded the second dying declaration and Medical Officer who attended the deceased and also certified about her condition to make a statement. On the point of incident, P.W.No.3, Hema S.Lakhe a friend of victim was examined and so also her mother, Vatsala L.Ingale, P.W.No.4 and her relatives to establish that the deceased was treated with cruelty and that she disclosed to them that she has been set ablaze by pouring kerosene on her person by the appellant accused.

9. The learned trial court found that the prosecution has established that the deceased was treated with cruelty by the appellant accused and it is the appellant accused who was responsible for causing death by pouring kerosene on her person and setting her ablaze resulting in her death as a result of which she died and found the appellant accused guilty of having committed offence under

section 302 and 498A of the I.P.C. and convicted and sentenced him accordingly.

10. Mr.Arfan Sait, the learned counsel for the appellant-accused submitted that in view of the fact that there are two inconsistent dying declarations and the first in time exonerates the appellant-accused, he deserves to be given benefit of doubt. It is submitted that the victim did not disclose at the first available opportunity that she has been set on fire by her husband and a friend of the victim, P.W.No.3, Hema Lakhe who according to the prosecution was first to visit her immediately after the incident and secondly when she was taken to the hospital she did not implicate the appellant accused as the person responsible for causing the burn injuries suffered by her. On the other hand, after the matter was reported by the hospital authorities to the police, A.S.I. Khedekar requisitioned the Magistrate to record the dying declaration. In her statement to the Magistrate, she in clear terms exonerated the appellant accused.

11. Mr.Arfan Sait, the learned counsel for the appellant accused submits that the second dying declaration recorded by P.W.No.1, Special Judicial Magistrate Mr.Khomane cannot be held to be voluntary and made out of free will as it came to be recorded after the relatives of the deceased came and met her at the hospital and thereafter tutored her to implicate her husband at the behest of the elder brother of the appellant accused who was police sub inspector and was having strained relations with his brother out of some money transaction and therefore it would be most unsafe to rely on such dying declaration which is made after a gap of two days under the influence of her relatives.

12. It is also submitted by the learned counsel for the appellant accused that the prosecution's case solely depends on the dying declaration of the deceased and the fact that the deceased has suffered burn injuries out of bursting of stove which was merely an accident, the prosecution has failed to prove the case against the appellant accused beyond reasonable doubt. It is further

submitted that in the first dying declaration Ex.24 the deceased Sangita has not even marked the presence of the appellant accused but has stated that when she suffered burns due to bursting of stove she raised an alarm and it is her father-in-law who rushed and saved her by pouring water so as to extinguish fire.

13. It is further submitted that the police also failed to take cognisance of the case when it appeared to them from the first dying declaration Ex.24 that it was the case of accident and it is subsequently the relatives of the deceased, particularly the mother who made the grievance to the Medical Officer of the hospital after the victim was tutored that the appellant accused was falsely implicated.

14. It is submitted that the other evidence brought on record by the prosecution such as the medical and forensic evidence as well as spot panchnama, inquest panchnama and so on, is corroborative in nature and by itself does not prove the guilt against the appellant accused.

15. Lastly, it is submitted that even if it is accepted that the appellant accused was responsible for causing burn injuries to the deceased and if deceased died for want of proper medical treatment after the period of 38 days and therefore in such case, the court can very well appreciate, particularly after considering the medical evidence on record, that deceased has suffered merely 46% burn injuries and that there was no intention on the part of the appellant accused to commit her murder or probably out of quarrel, she might have set herself ablaze and the conduct of the appellant accused and her father in extinguishing the fire and taking her to the hospital for treatment will bring the case within the ambit of s.304 part II of the I.P.C. and as the accused had already undergone more than 10 years by way of imprisonment it would sufficiently meet the ends of justice, therefore, conviction be altered from 302 to 304 part II of the I.P.C.

16. Mr.Mhaispurkar, the learned A.P.P. for the state submits that the prosecution has clearly

established that it is the appellant accused who is responsible for causing death of the deceased, Sangita who was his wife. It is submitted that the prosecution has placed on record evidence to the effect that Sangita was treated with cruelty by her husband who used to beat her even on small pretexts and on the day of incident he poured kerosene on her person and set her ablaze.

17. It is submitted that in the second dying declaration of Sangita recorded by P.W.No.1, the victim has removed all doubts as regards the facts and circumstances which made her state in her first dying declaration Ex.24 that she suffered burn injuries due to bursting of stove due to threat given by the appellant accused that if she stated the truth he will kill her daughter who was a child of merely two years of age at the time of the incident and the appellant accused was very much present in the hospital.

18. Mr.Mhaispurkar, the learned A.P.P. further submits that the dying declaration is not only voluntary but inspires confidence as it stands

corroborated by the fact that at the scene of occurrence burnt pieces of the clothes which the deceased was wearing at the time of the accident came to be seized alongwith the can containing kerosene and which was forwarded to the forensic lab. The clothes of the deceased were found having residue of kerosene. Further, the medical evidence on record which is established by examining Dr.Kurlekar P.W.No.2 who had examined deceased Sangita after her admission in the hospital clearly rules out case of accidental death stating the injuries suffered by the victim all over her body and this stands duly corroborated by post mortem report.

19. It has been submitted that the prosecution has brought on record sufficient evidence to show that the injuries suffered by the victim in the ordinary course of nature would cause her death and therefore the case is duly covered by clause 3 of s.300 of the I.P.C. and therefore the contention of the learned counsel for the appellant that the case of the appellant accused can be considered u.s.304 part II of the I.P.C. deserves to be

discarded.

20. Mr.Mhaispurkar, the learned A.P.P. submitted that this court considers dying declaration alongwith attendant circumstances and the evidence of witnesses. There is no reason why the deceased and her relatives would falsely implicate the appellant accused and therefore, there is no merit in the appeal and the same deserves to be dismissed.

21. In so far as the prosecution's case that Sangita's death was homicidal, the evidence of P.W.No.2, Ukrant A.Kurlekar and P.W.No.5, Dr.Shrikant S.Chandekar has been led to establish the cause of death. Dr.Chandekar has conducted post mortem examination of the body of Sangita on 28.9.95 and he found following external injuries:

1) Superficial to deep burns involving:

Head, neck face 4%

Upper limbs 14%

Chest, abdomen 14%

Back 14%

Total burns were 16%
Burnt areas inflected as places and also showed healing activity at other places.

2) Bed sores over lower back, with purulent exudate present

22. In the opinion of Dr.Chandekar, both the above mentioned injuries were ante-mortem. On internal examination he observed that the organs were congested and the lungs were showing patchy consolidation. In his opinion, she died because of septic shock following burns. Accordingly, he prepared the report of post-mortem which is Ex.18. Dr.Chandekar has further deposed to the effect that 46% burns are sufficient to cause death in the ordinary course of nature. Septicaemia is generally found in burn cases. In the cross-examination, it was tried to be suggested that if best treatment was given probably patient would have survived but that does not help the appellant accused in diluting the charge of murder.

23. In addition to the evidence of

Dr.Chandekar, prosecution has also led evidence of P.W.No.2, Mr.Kurlekar who has in his deposition stated that after admission, he examined the patient on 21.8.95 in the morning at about 9 a.m. On examination he found that the patient had in total burn about 50 to 52%. On examination, he found following were the percentage of burnt:

1. Chest 9%
2. On Abdomen 9%
3. Back 9%
4. Both upper extremities each 9%
5. On thigh 3 to 5%
6. On head, face, neck 1 to 2%

24. In his opinion also, the burn injuries which were present on the person of Sangita in the ordinary course of nature would cause her death. He has also deposed to the effect that Sangita was an indoor patient in the hospital from 20.8.95 to 28.9.95 and she died in the hospital on 28.9.95 at 12 noon. In the cross-examination, Dr.Chandekar was confronted with medical case papers of Sangita but was not in a position to state as to who has

recorded history of the patient on page 8. The cross-examination is merely on the point of identifying signature of Medical Officer but in no manner his opinion has been dislodged. On the other hand, there was a specific question put to him in the cross-examination about the death of Sangita which in his opinion, was caused due to septicemia and not due to bed sores.

25. If the evidence of these two Medical Officers is carefully examined, one thing is very clear that the nature and location of burn injuries all over the body of Sangita rules out the theory of accident as she has suffered burn injuries all over her body and if this evidence is taken into consideration with attendant circumstances brought on record by examining the panchas in whose presence spot panchnama was prepared and it goes to show the stove was placed on a height of ota and if it would have burst causing burn injuries to Sangita then there is no reason why and how she would suffer burns on her lower limbs and back. Further, the pancha has also stated to the effect that they could see kerosene and water spread on

the floor of the kitchen and a can containing kerosene was also found in the kitchen. There was a match box partly burnt. C.A.'s report dt.30.12.95 Ex.39 also spells out that so far as clothes of the deceased were concerned Exhibit 1 and 2, they were put to test for the detection of kerosene which was found positive and also liquid at Exhibit 5 i.e. in the can bluish colour liquid was found to be kerosene. It is pertinent to note that if the stove had burst then it would have been definitely noticed in that condition at the scene of offence which is not so. Therefore, we find that the prosecution has established by bringing on record sufficient material as evidence to show that death of Sangita was homicidal.

26. The most crucial evidence in the case is in the form of dying declaration of the victim recorded by Special Judicial Magistrate, J.H.Khomane, P.W.No.1, on 23.8.95 at Sanjeevan Hospital. From the evidence of this witness, the prosecution has brought on record that Mr.Khomane who was a Special Judicial Magistrate at the relevant time was requested by Kotrud Police

Station to record the dying declaration of Sangita Jadhav who was admitted in Sanjeevan Hospital, copy of the said request letter is at Ex.10 and therefore, he visited Sanjeevan Hospital and contacted the doctor on duty and informed him the purpose of visit i.e. for recording the dying declaration of the patient, Sangita. Mr.Khomane, was taken to a special room where Sangita was admitted by Dr.Patil, P.W.No.11, who was at the relevant time on duty as Medical Officer in Sanjeevan Hospital. It has come in the evidence of Mr.Khomane that Dr.Patil P.W.No.11 examined the patient Sangita and certified by endorsing the dying declaration i.e.Ex.11 that the patient is in the state of giving the statement. This stands corroborated by the evidence of Dr.Patil himself who confirms the fact that he accompanied P.W.No.1, Special Judicial Magistrate to the ward where the patient was admitted and after examining the patient he has given the endorsement in the left hand side of column of the letter that the patient was in a state of giving the statement which is Ex.11. According to Mr.Khomane at the time they visited the patient the patient was alone in the

room. Mr.Khomane satisfied himself by questioning the patient that he was in a state of giving the statement and was conscious.In his deposition before the court, he has stated that as per information given by the police, Sangita had earlier given one statement and therefore he questioned her as to why she wants to give another statement, to which she replied in the affirmative by giving reasons and thereafter he recorded her statement as narrated by her. After recording the narration about the incident, he asked Sangita that in the earlier statement she had stated that her saree caught fire due to over flaming of the kerosene due to bursting of the stove. To which she gave a specific reply that earlier statement was given by her in that manner due to threat of killing extended to her. Mr.Khomane thereafter again asked her on whose say she was giving this statement. To which she replied that she is giving the statement voluntarily and after recording the statement he read over the statement to her and when she affirmed that the contents of the statement were true and correct, he obtained impression of toe of the left leg as fingers of

both the hands were having burn injury and she was unable to sign such certificate. After recording of statement was completed, he again obtained second endorsement of Dr.Patil, P.W.No.11 who made an endorsement to the effect that patient was conscious while giving the statement and that the statement was given in his presence.

27. Mr.Khomane has also deposed to the effect that in addition to recording the dying declaration Ex.11, he has also prepared certain notes which he has tendered in his evidence. The same is taken on record at Ex.11-A which goes to show the precaution taken by Mr.Khomane while recording the statement of Sangita. The evidence of Shri Khomane goes unchallenged as nothing could be brought on record in cross-examination to show that he has not recorded the statement of Sangita as required by law. Further, his evidence stands duly corroborated by Dr.Patil on all counts who has also denied the suggestions that at the time dying declaration came to be recorded he was not present in the hospital and that Special Judicial Magistrate had not come at the time of recording

dying declaration and that signature has been obtained subsequently.

28. Much hue and cry has been made by the learned counsel for the appellant accused. On the issue of second dying declaration being inconsistent with the earlier dying declaration of the victim and it is submitted that as in the first dying declaration which is earlier in point of time, the deceased had exonerated the appellant accused, it would be unsafe to arrive at the finding that the appellant accused is guilty of pouring kerosene on the person of his wife deceased Sangita and setting her ablaze because of which she suffered burn injuries. We find that if the prosecution wanted to suppress this fact they would not have placed the first dying declaration on record. Not only this, but initially the Investigating Agency did not register any offence against the Appellant Accused as in the first dying declaration Sangita did not implicate her husband and gave her statement to the effect that she suffered burn injuries due to bursting of stove i.e. accidental when she was trying to put on the

stove for cooking. It is only after her mother Vatsala P.W.No.4 came to know from her that she has been actually burnt by her husband and made a grievance to the hospital authorities that the matter was reported to the police and P.W.No.1 Mr.Khomane was requisitioned to record the dying declaration. In the second dying declaration itself, she has specifically given the reasons that her husband had threatened her that if she tells the truth he would kill her small daughter and therefore, she did not reveal the true facts when she was admitted in hospital.

29. It is now well settled by catena of decisions that the dying declaration can form the sole basis of conviction as in this case the deceased was conscious, alert and capable of making a statement and stated voluntarily that it is her husband who poured kerosene on her person and set her ablaze. In the present case, it has been tried to be canvassed that it is only after the mother and close relatives and friends of the deceased reached that she gave her second dying declaration implicating her husband, though in the first

statement made to the Magistrate, she has completely exonerated the accused. What we find is there is no reason for not acting on the dying declaration of the deceased wherein she has given a fair and vivid statement that she has been set on fire by pouring kerosene oil on her by her husband and explaining the circumstances under which she was required to make the first statement exonerating her husband under the threat that he would kill her child. One cannot overlook the fact that as the deceased was continuously treated with cruelty by her husband her concern for the child is but natural and the threat was potent enough to deter her from making a truthful statement.

30. The first dying declaration Ex.24 was made under duress and is to be understood from the cause stated by her relating to suffering burn injuries by bursting of stove which does not stand corroborated by forensic evidence and from the evidence of the witness to the spot panchnama as well i.e. P.W.No.6 and the panchnama dt.21.8.95 does not go to show that the kerosene stove was in damaged condition. We find in the evidence of the

the panch P.W.No.6, he had stated that when he went inside the kitchen room, he noticed that there was kitchen platform in the kitchen room and on such platform there was a kerosene stove. There was one plastic can containing small quantity of kerosene. There was match box partly burnt. There was partly burnt Nylon sari and partly burnt blouse and that the police seized all these articles from the spot. In his cross-examination, there is not even a suggestion to the effect that this stove had burst. Further the forensic evidence in the form of C.A.report which is tendered before the court and marked Ex.39 also go to show that kerosene was found on the burnt saree and burnt blouse of the victim. So also the medical evidence of Dr.Chandekar, P.W.No.5 and Dr.Kurlekar, P.W.No.2 who examined the patient at the time of admission found burn injuries all over the dead body of Sangita. The nature of burn injuries found on the lower limb and back of the victim belies the story of the victim suffering burn injuries due to bursting of stove i.e. by accident.

31. In so far as evidence of other witnesses is

concerned, which rather corroborates the prosecution's case that the victim was treated with cruelty and in all probability it is the appellant accused who poured kerosene on her and set her ablaze, it indicates that the appellant accused wanted to get rid of her.

32. P.W.No.3 is the first witness who also speaks about the cruel treatment to the victim by her husband, of which she often complained to her. This witness particularly deposed in her evidence before the court at the time she reached the flat of Sangita, she saw flames on the person which were extinguished by pouring water and Sangita was sitting. Sangita requested her to remove partly burnt clothes from her person. Accused was present in his home. She demanded scissors from the accused but accused did not give the same. The father-in-law of Sangita then gave her scissors. It is with the help of scissors that she cut the stuck clothes on the person of Sangita and wrapped her with a chadar. Thereafter someone brought auto-rickshaw and they accompanied her to the hospital. It is deposed by her that Sangita was

requesting to save her in anyway and accused informed Sangita not to disclose the incident to any one else and accused was saying that it would be better if Sangita would die. This also speaks about the intention of the appellant accused in getting rid of her and also corroborates the dying declaration of Sangita that she gave her first statement due to threat given by the husband of the deceased not to disclose the incident to anyone.

33. In so far as relatives of the victim are concerned i.e. P.W.No.4,Vatsala Ingale mother of the victim and P.W.No.7, Kalpana Krishnarao Jadhav, elder sister of the victim goes to show that the appellant accused used to treat Sangita with cruelty. Therefore, after taking into consideration the evidence on record, we have no hesitation to hold that it is the appellant accused who is guilty of having committed murder of his wife Sangita by pouring kerosene on her person and setting her ablaze resulting in burn injuries which was the cause of her death.

34. Therefore the trial court was justified in

arriving at the conclusion that the appellant accused is guilty of having committed the offence u.s.302 and 498A of the Indian Penal code. The judgment and order of the trial court convicting and sentencing the accused for having committed offence u/s 302 and 498A of the Indian Penal Code does not call for any interference. Appeal is dismissed.

J.N.PATEL, J

SMT.ROSHAN S.DALVI, J